5-24-1854

On the Case of D. Carter

33d CONGRESS, 1st Session. [SENATE.] REP. COM. No. 284.

IN THE SENATE OF THE UNITED STATES.

MAY 24, 1854.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the resolution of the Senate of the 6th day of February, instructing them to inquire into the claim of David Carter, report:

That this claim is for the amount of the valuation of his improvements in the Cherokee country, under the treaty of 1828, by which the United States, for the purpose of inducing a voluntary emigration of the Cherokees, especially in the State of Georgia, to the country already settled by a portion of their tribe, west of the Mississippi river, agreed to pay to all such as would emigrate the value of their improvements. Under this treaty David Carter, a Cherokee, owner of several improvements besides his homestead, enrolled his name for emigration on the day of , 1834, and the aggregate value of his improvements, as valued by the commissioners appointed for that purpose, was $4,249 50, which, by the terms of the enrollment, was to be paid to him in the west. By some accident the money was not paid when he emigrated. In the meantime the final treaty of 1835, by which the remaining Cherokees east sold the whole of their country, was made, and in the 15th article of that treaty a clause was inserted, "and such Cherokees as have removed west since June, 1833, who are entitled, by the terms of their enrolment and removal, to all the benefits resulting from the final treaty between the United States and the Cherokees east; they shall also be paid for their improvements, according to their approved value, before their removal, where payment has not already been shown in their valuation."

This claim was an affirmation of the right of David Carter to the value of his improvements under the treaty of 1828, and was intended to provide for a class of emigrants of which he was one.

In the same treaty, by the 9th article, it was also provided that suitable agents should be appointed to value among "such improvements and ferries from which they (the Cherokees) have been dispossessed in a lawless manner, or under any existing laws of the States where they may be situated." Under this stipulation, as well as the 16th article, a species of claim grew up denominated "rents" and spoliations, from the fact that the dispossession of such ferries and improvements were numbered by their usual rent during the period for which the owner was thus deprived of them. In consequence of the failure to receive

the value of his improvements out west, under the treaty of 1828, David Carter returned to the country east to assert his accumulated rights under the last and former treaties, being the value of his "improvements" under the first, and compensation for the use of them under the last, denominated as above, "rents" or "spoliations."

The commissioners appointed under the 17th article of the treaty of 1835 adjudicated his claim for "rents" of mills and farms, and ascertained their value to be $4,542, which was paid in full, although the claim was not embraced in the literal terms of the treaty; yet the commissioners decided that David Carter, by the non-payment of the value of his improvements, after emigration, the United States had violated the treaty, and others remitted him to his original ownership, as though he had never enrolled for emigration; and regarding his dispossession under the circumstances as "lawless," allowed him rent for the period of three years. This decision was, however, final in its character, has never been reversed, and has been fully paid, and should have been ever after unquestioned. A verbal criticism of that decision afterwards raised a doubt whether it did not embrace both the value and rents of the improvements under both treaties, and this, with the delays ensuing from investigation of a charge of fraud and extravagance in the *valuation* of the improvements originally, has suspended the payment. On the 11th June, 1834, R. J. Meigs reported that many impositions had been practised in these valuations under the treaty of 1828. He was accordingly directed to review these proceedings, and made a report, among others, upon the case of David Carter, reducing his valuation to $1,251, "unless," to quote his language, "Carter can show something to the contrary, which I think he ought to have an opportunity to do."

This recommendation was carried out, and Carter, upon a further investigation by special agent B. F. Curry, was acquitted of all charge of fraud; but his valuation, under the circumstances, was reduced to $2,826 50, in order to apportion the gross amount among other conflicting claimants. In a letter from Elbert Herring, Commissioner of Indian Affairs, dated October 15, 1835, addressed to the Secretary of War, it does not appear that any affirmative action was had. This may be taken as the just and fair valuation of the improvements, for which, in the opinion of the committee, provision ought to be made. This whole amount has never been paid; it was suspended again by a doubt, raised in the opinion of 16th August, 1842, in which he suggests that the award of the commissioners embraced both his valuation and rents. In this opinion he misconceives the terms of the decision, and their letter to the department of 11th September, 1837, and overlooks the whole proceedings embracing the re-investigation by Mr. Curry, and the recommendation of his predecessor in office, Mr. Herring, which had virtually disposed of the case. The decision of the commissioners, Lumpkin and Kenedy, entitles the decree thus: "David Carter's claim for spoliation," a term well settled under this treaty as synonymous with "rents." Again they say: "This claim is for the *rent* of lands and mills." And in speaking again of it in the decree they say, that "he has been kept out of his possession for three years, as before stated, the rents of which, at fair prices, makes the aggregate sum of $4,542." An inaccurate use of the word "valuation,"

in their said letter of the 11th of September, 1837, is the sole foundation of all the subsequent proceedings—an error upon which was based that opinion of the commissioner, as well as a decree of the commissioners Brewster and Hardin in 1847, which purports to decide a case which was obviously never before them. Recurring again to the letter of the commissioners, they say, "that we have *not* decided the conflicting claims," (which were for the valuation of several improvements under the treaty of 1828, particularly mentioned and explained in Curry's report,) "but have allowed a spoliation claim under the late treaty" (1835.) "This *spoliation* claim," say they, "was in the nature of a claim for rents and mills." Neither in the decree, nor in the letter aforesaid explaining it, does the original valuation possess any importance, except to show a dispossession as the basis for the claim for "spoliation" or "rent." The whole of the proceedings of the Indian office, and the unauthorized decree of Messrs. Brewster and Hardin, were plainly a *mistake*, founded upon a misconception and oversight of the previous disposition of the claims, a complication which, the committee think, should be disregarded. By so doing, the case stands upon a just, fair, and final disposition made in 1835, which the committee is willing to sanction. An appropriation for the amount then ascertained is therefore awarded, as a just fulfilment of the treaty of 1828.